

STATE OF INDIANA)		IN THE WELLS SUPERIOR COURT
)	SS:	
COUNTY OF WELLS)		CAUSE NO. _____
LANCE D. SHEPHERD,)		
)		
Plaintiff,)		
)		
v.)		
)		
GREEN PLAINS BLUFFTON, LLC,)		
)		
Defendant.)		

COMPLAINT

Plaintiff alleges against Defendant that:

1. The Plaintiff is Lance D. Shepherd, an individual who claims that he was discriminated against and discharged and retaliated against on account of his disability in violation of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12111 *et seq.* ("ADA") and the Family Medical Leave Act of 1993, 29 U.S.C. § 2601 *et seq.* ("FMLA"), as set forth in Charge of Discrimination No. 470-2019-00749 which is attached hereto and made a part hereof as Exhibit A. Plaintiff received a Notice of Right to Sue on or about March 22, 2019 (Exhibit B), and this Complaint has been filed within ninety (90) days after receipt thereof.
2. Defendant is Green Plains Bluffton, LLC, a corporation doing business at 1441 South Adams Street, Bluffton, Indiana 46714. Defendant's registered agent is CT Corporation System, 150 West Market Street, Suite 800, Indianapolis, IN 46204.
3. Plaintiff alleges that he was perceived and regarded as being disabled because the

Defendant “thought” that Plaintiff had drug issues and psychological issues and took him off work and made him use FMLA time even though Plaintiff did not need it and did not ask for it. As a result, Plaintiff lost about sixteen (16) weeks of pay, and he was required to undergo physical and psychological assessments in order to return to work. Plaintiff objected to the perceived as/regarded as discrimination and was thereafter retaliated against.

4. As a result of Defendant’s actions, which were intentional and in reckless disregard of Plaintiff’s federally protected civil rights under the ADA and the FMLA, Plaintiff lost income of approximately sixteen (16) weeks, he experienced emotional distress, mental anguish, humiliation, embarrassment, inconvenience, and other damages and injuries for which he seeks compensatory damages.
5. Plaintiff seeks punitive damages because the actions of the Defendant were intentional and in reckless disregard of Plaintiff’s federally protected civil rights.

WHEREFORE, Plaintiff prays for judgment against the Defendant, for compensatory damages, liquidated damages under the FMLA, punitive damages under the ADA, reasonable attorney’s fees and costs under both the FMLA and ADA, and for all other just and proper relief in the premises.

JURY DEMAND

Pursuant to Rule 38 of the Indiana Rules of Trial Procedure, Plaintiff demands a trial by jury in this action.

Respectfully submitted,

CHRISTOPHER C. MYERS & ASSOCIATES

/s/Christopher C. Myers

Christopher C. Myers, #10043-02
809 South Calhoun Street, Suite 400
Fort Wayne, IN 46802

Telephone: (260) 424-0600

Facsimile: (260) 424-0712

E-mail: cmyers@myers-law.com

Counsel for Plaintiff

CCM/rb

01:27:51 p.m. 11-29-2018

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FAX No.

P. 004

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		Charge Presented To: Agency(ies) Charge No(s): <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC 470-2019-00749	
Equal Employment Opportunity Commission and EEOC			
Name (Indicate Mr., Ms., Mrs.) Lance D. Shepherd		Home Phone (Incl. Area Code) (260) 273-2776	
Street Address 1155 S. 400 E.		City, State and ZIP Code Bluffton IN 46714	
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name Green Plains, Inc.		No. Employees, Members 29	
Street Address 1811 Aksarben Drive		City, State and ZIP Code Omaha, NE 68106	
Name Green Plains, Inc.		No. Employees, Members 27	
Street Address 1441 South Adams		City, State and ZIP Code Bluffton, IN 46714	
DISCRIMINATION BASED ON (Check appropriate box(es).) <input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input checked="" type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION ADA		DATE(S) DISCRIMINATION TOOK PLACE Earliest: 02/2018 Latest: 06/2018 <input checked="" type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):			

I. Complainant, Lance D. Shepherd, alleges that his employer, Green Plains, Inc. (Respondent), discriminated against him on account of his perceived/regarded as disability, and made him, over Complainant's objection, take medical leave under the FMLA. Complainant objected to Respondent's actions and he was retaliated against by being forced to take a drug test and by being deprived of sixteen weeks of work/salary, all in violation of the American with Disabilities Act of 1990, 42 U.S.C. § 12111 et. seq. ("ADA") and the Family Medical Leave Act of 1993, 29 U.S.C. § 2601 et. seq. ("FMLA"). Respondent threatened Complainant with termination if he did not "accept" (by force) the utilization of all of his FMLA, which caused Complainant to lose income for approximately sixteen weeks.

II. Without cause or reason, and only for the purpose of discriminating against Complainant and retaliating against Complainant, Respondent (by its supervisors/managers) told Complainant that he had been "making bad choices" and forced Complainant to undergo a drug test on or about February 14, 2018 — but Complainant did not do drugs and passed the drug test. Even though Complainant passed the drug test and proved that he was not doing drugs, Respondent nevertheless forced Complainant to be physiologically and psychologically cleared to return to work. Respondent "placed" Complainant on FMLA (over Complainant's objections) from about February 19, 2018 through May 26, 2018. Complainant presented a return-to-work slip to Respondent from his physician at Lutheran Health Physicians. Respondent forced Complainant to obtain a psychological assessment which Complainant submitted to on or about June 6, 2018. Complainant passed the assessment as his physician stated "this assessment revealed that it did not appear there were any mental health concerns that would preclude him [Complainant] from completing his work tasks." Complainant presented this return-to-work slip to Respondent on or about June 26, 2018.

EXHIBIT

A

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III. As a direct and proximate result of the discriminatory and retaliatory actions of the Respondent, Complainant suffered a loss of work-time for approximately sixteen weeks, causing Complainant to suffer a loss of income over the same time period. Complainant suffered a loss of pay, mental anguish, emotional distress, humiliation, embarrassment, inconvenience, and other damages and injuries. The actions of the Respondent were intentional and in reckless disregard of Complainant's federally protected civil rights, warranting an imposition of punitive damages under the ADA and liquidated damages under the FMLA. Complainant seeks declaratory and injunctive relief, i.e. an Order from the Court stating that Respondent's actions in requiring that Complainant take and utilize all of his FMLA to be unlawful and to restore Complainant's benefits under the FMLA and to require that Respondent pay Complainant for his sixteen weeks of loss pay, plus prejudgment interests, plus liquidated damages.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

11-29-2018

Date

Charging Party Signature

NOTARY - When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

11/29/2018

LORI KAY ROLB
SealNotary Public - State of Indiana
Allen County

My Commission Expires December 31, 2021

DISMISSAL AND NOTICE OF RIGHTS

To: Lance Shepherd
 1155 S. 400 E
 Bluffton, IN 46714

From: Indianapolis District Office
 101 West Ohio St
 Suite 1900
 Indianapolis, IN 46204



On behalf of person(s) aggrieved whose identity is
 CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

470-2019-00749

Marc A. Fishback,
 Enforcement Supervisor

(317) 226-7017

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission

For:

Michelle Eisele,
 District Director

MAR 20 2019

(Date Mailed)

Enclosures(s)

cc:

Michelle Mapes
 Chief Legal and Administrative Officer
 GREEN PLAINS, INC.
 1811 Aksarben Dr.
 Attn: Legal
 Omaha, NE 68106

Christopher C. Myers
 CHRISTOPHER C. MYERS & ASSOCIATES
 809 S. Calhoun Street
 Suite 400
 Fort Wayne, IN 46802

EXHIBIT

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